

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

DEMETRIUS A. WHITE, #294960,

Petitioner,

v.

ACTION NO. 2:05cv365

GENE M. JOHNSON, Director of the
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to Petitioner's conviction on January 17, 2001, in the Circuit Court of the City of Norfolk, Virginia, for one (1) count of first-degree murder and one (1) count of use of a firearm in the commission of a murder. Petitioner was sentenced to one (1) life sentence for the murder charge, plus three (3) years in prison for the use-of-a-firearm charge.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C), Rule 72(b) of the Federal Rules of Civil Procedure and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The report of the Magistrate Judge was filed on July 12, 2006, recommending dismissal of the petition. By copy of the report, each party was

advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. On August 3, 2006, the Court received Petitioner's Response to the Report and Recommendation. The Court received no response from Respondent.

The Court, having reviewed the record and examined the objections filed by Petitioner to the Magistrate Judge's report,¹ and having made de novo findings with respect to the portions objected to, does hereby ADOPT AND APPROVE the findings and recommendations set forth in the report of the United States Magistrate Judge filed on July 12, 2006, and it is, therefore, ORDERED that the petition be DENIED AND DISMISSED WITH PREJUDICE and that judgment be entered in favor of Respondent.

Accordingly, the Court FINDS that: in claim (a) Petitioner has not demonstrated that the Supreme Court of Virginia unreasonably determined the facts or unreasonably applied federal law in dismissing the claim; and in claim (b) Petitioner has not demonstrated that the Circuit Court unreasonably determined the facts or unreasonably applied federal law in dismissing the claim.

Petitioner may appeal from the judgment entered pursuant to this final order by filing a written notice of appeal with the Clerk of this Court, United States Courthouse, 600 Granby Street,

¹The Court notes that Petitioner's objections essentially restate issues raised in the instant federal habeas petition. Accordingly, the Court finds the Petitioner's objections to be adequately addressed by the Magistrate Judge's Report and Recommendation.

Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment. Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right." Therefore, the Court, pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, declines to issue a certificate of appealability. See Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003).

The Clerk shall mail a copy of this Final Order to Petitioner and to counsel of record for Respondent.

/s/ Jerome B. Friedman

UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

August 25, 2006